

¹Petitioner has named as respondent the State of Missouri. The proper respondent when a petitioner is in jail due to the state action he is attacking is the state officer having custody of the applicant. See Rule 2 of the Rules Governing § 2254 Cases. Petitioner is currently residing at the Southeast Missouri Mental Health Center (“SMMHC”). Accordingly, Melissa Ring, the Chief Operating Officer of SMMHC, is the proper respondent.

County, Missouri. Petitioner alleges, among other things, that he was coerced by his attorney into entering a NGRI plea.

Discussion

Both 28 U.S.C. § 2243 and Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts provide that a district court may summarily dismiss a petition for writ of habeas corpus if it plainly appears that the petitioner is not entitled to relief. A review of the instant petition indicates that it is time barred under 28 U.S.C. § 2244(d)(1), and is subject to summary dismissal.

Petitioner states that he entered his NGRI plea on June 8, 1988 but did not appeal his NGRI plea. Thus, only § 2244(d)(1)(A) is applicable to petitioner, and his one-year limitation period began to run on the date upon which his judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. Because petitioner did not appeal his NGRI plea, his one-year limitation period began to run--at the latest--ten days from June 8, 1988, the date on which petitioner's judgment was entered. Cf. Smith v. Bowersox, 159 F.3d 345 (8th Cir. 1998); Mo. Sup. Ct. R. 30.01(d). Because the judgment petitioner wishes to attack became final before the establishment of the one-year limitation period, he is entitled to a one-year grace period ending on April 24, 1997. See Ford v. Bowersox, 178 F.3d 522, 523 (8th Cir. 1999). The instant petition was received by this Court more than twelve years after the running of the one-year limitation period.

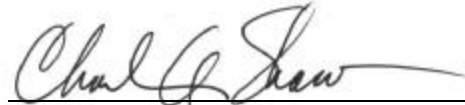
Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that the instant application for writ of habeas corpus is **DENIED** as time barred. See 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. [Doc. 1]

IT IS FURTHER ORDERED that the Clerk shall docket this case as Kevin D. McGee v. Melissa Ring.

An appropriate Order of Dismissal will accompany this Memorandum and Order.

A handwritten signature in dark ink, appearing to read "Charles A. Shaw", is written over a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 4th day of June, 2009.